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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CORECIVIC, INC.,

Plaintiff,

v.

CANDIDE GROUP, LLC and MORGAN  
SIMON,

Defendants.

CASE NO: 3:20-cv-03792-WHA

ASSIGNED TO: Judge William Alsup

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' STATEMENT OF  
RECENT DECISION IN SUPPORT OF  
THEIR MOTION TO RECOVER  
ATTORNEYS' FEES AND COSTS**

Date: February 25, 2021  
Time: 8:00 a.m.  
Location: San Francisco Courthouse  
Courtroom 7 – 19th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

FILE DATE (Central District): March 4, 2020  
FILE DATE (Northern District): July 7, 2020  
TRIAL DATE SET: No Date Set

On February 9, 2021, Defendants filed a “Statement” attaching a Magistrate Judge’s Order granting in part a motion for attorneys’ fees and costs in *Herring Networks, Inc. v. Maddow*, No. 20-cv-3792 (S.D. Cal. Feb. 5, 2021). In their Statement, Defendants argue that the *Herring Networks* order “is relevant to the arguments in Defendants’ Motion to Recover Attorneys’ Fees and Costs” and justifies granting Defendants’ exorbitant request for attorneys’ fees here. It does not.

1 First, unlike here, in *Herring Networks* the question of the applicability of California's anti-  
 2 SLAPP statute in federal court in light of the U.S. Supreme Court's decision in *Shady Grove* was  
 3 neither briefed nor addressed by the court; the statute was simply assumed to apply. But it cannot.

4 Second, unlike here, in *Herring Networks* the plaintiff did not argue that California's anti-  
 5 SLAPP statute could not apply because the defendants' challenged speech fell within the Act's  
 6 commercial speech exemption. Here, that exemption fully applies.

7 Third, unlike this case, *Herring Networks* involved substantial evidentiary submissions by  
 8 the plaintiff—including a lengthy linguistics expert report, multiple substantive declarations, and  
 9 an *ex parte* motion to supplement the record with even further evidence—that compelled the  
 10 defendants to perform substantial work that would not have otherwise been necessary to challenge  
 11 the legal sufficiency of the plaintiff's complaint, thus incurring substantial additional attorney  
 12 hours. Moreover, defense counsel in *Herring Networks* actually efficiently performed all of that  
 13 work, receiving fees for 363 hours, whereas defense counsel here seek fees for 366 hours for work  
 14 on a single anti-SLAPP motion raising a legal challenge with no factual record and no experts.

15 Fourth, unlike here, the defendants in *Herring Networks* actually owed full fee payment to  
 16 their counsel upon prevailing on their anti-SLAPP Motion; Defendants here agreed to pay—and  
 17 were only liable to pay—fixed hourly rates regardless of the outcome. Thus, the *Herring Networks*  
 18 defendants sought reimbursement for fees actually owed; Defendants' counsel here seek a windfall.

19 Fifth, unlike Defendants in this case, the defendants in *Herring Networks* were represented  
 20 by Gibson Dunn partner Theodore J. Boutrous, Jr., who has substantially more experience and  
 21 recognition than Defendants' counsel here, including having been named Litigator of the Year by  
 22 The American Lawyer and one of the 100 Most Influential Lawyers in America by The National  
 23 Law Journal.

24  
 25 Dated: February 10, 2021

26 NEWMEYER & DILLION LLP

CLARE LOCKE LLP

27 By: /s/ Michael B. McClellan

By: /s/ Elizabeth M. Locke, P.C.

28 Michael B. McClellan

Elizabeth M. Locke, P.C. (*pro hac vice*; VA Bar 71784)

**FILER ATTESTATION**

In accordance of Civil L.R. 5-1(i)(3), I hereby certify that I have authorization to file this document from the signatories above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed on this 10th day of February, 2021 at Newport Beach, California.

/s/ Michael B. McClellan  
Michael B. McClellan

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